

#13

NEW NUM BSA

16116

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

LAW OFFICES  
**ALVORD AND ALVORD**

200 WORLD CENTER BUILDING

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WASHINGTON, D.C.

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INTERSTATE COMMERCE COMMISSION

DEC 29 1988 11:40 AM  
1 6116

RECORDATION NO. 1 6116 Filed 1428

December 29, 1988

Ms. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. 8-364A015  
DEC 29 1988  
Date .....  
Fee \$ ...13.00.....

Dear Ms. McGee:

ICC Washington D C

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed original copies of a Lease of Railroad Equipment dated as of December 1, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Pitney Bowes Credit Corporation  
201 Merritt Seven  
Norwalk, Connecticut 06856  
Lessee: Consolidated Rail Corporation  
1310 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

A description of the railroad equipment covered by the enclosed document is set forth in Schedules A and B attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$13 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

*Charles T. Kappler*

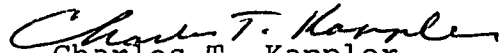
Dec 29 11 31 AM '88  
MOTOR OPERATING UNIT  
100 OFFICE OF THE SECRETARY OF TRANSPORTATION

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
December 29, 1988  
Page Two

A short summary of the enclosed primary document to  
appear in the Commission's Index is:

Lease of Railroad Equipment dated as of December 1,  
1988 between Pitney Bowes Credit Corporation, Lessor,  
and Consolidated Rail Corporation, Lessee, covering  
225 bi-level autoracks, 625 tri-level autoracks and  
150 bi-level autoracks, bearing lessee's identification  
numbers 7480 - 7704, 6855 - 7479 and 6705 - 6854,  
respectively.

Very truly yours,

  
Charles T. Kappler

Enclosures

**SCHEDULE A TO LEASE**

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Average Base Price Per Unit</u>
Fully-enclosed bi-level autoracks	Thrall	225	7480-7704	\$27,646
Fully-enclosed tri-level autoracks	Thrall	625	6855-7479	\$35,948

**SCHEDULE B TO LEASE**

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Base Price Per Unit</u>
Fully-Enclosed Bi-Level Auto Racks	Thrall Manufacturing Company	150	6705-6854	\$25,828

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

12/29/88

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/29/88 at 11:40am , and assigned recordation number(s). 16116

Sincerely yours,

*Nesta L. McEwen*  
Secretary

Enclosure(s)

INTERSTATE COMMERCE COMMISSION

DEC 29 1988 IN 40AAM

1 6116  
RECORDATION NO. 1 PER 1423

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LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1988

between

CONSOLIDATED RAIL CORPORATION

and

PITNEY BOWES CREDIT CORPORATION

---

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1988 between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and PITNEY BOWES CREDIT CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS, the Lessor has entered into an assignment of a purchase agreement dated as of December 19, 1988 with Thrall Car Manufacturing Company (the "Builder"), wherein the Builder has agreed to manufacture, sell, apply to Trailer Train Company ("Trailer Train") flatcars and deliver to the Lessor the units of railroad equipment described in Schedule A hereto and has entered into a purchase agreement dated as of the date hereof with the Lessee for the units of railroad equipment listed on Schedule B (collectively the "Purchase Agreement" and the "Equipment");

WHEREAS, the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the Purchase Agreement (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor (which term for purposes of this Lease shall include all members of the affiliated taxpayer group, as defined in Section 1504 of the Internal Revenue Code of 1986, as amended, of which Pitney Bowes Credit Corporation is a member) hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease and except as expressly provided herein the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the Purchase Agreement, or against the Builder or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the

intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. So long as no Event of Default or a situation which with the passage of time would become an Event of Default ("Potential Default") exists hereunder, if Lessor or anyone claiming through it shall interfere with Lessee's possession and use of any Unit in accordance with the terms of the Lease, Lessee's obligation to pay rent with respect to such Unit hereunder shall abate for so long as such interference continues provided, however, that Lessor's inspection of the Equipment in accordance with the terms of the Lease shall not be deemed to be an interference.

**Section 2. Delivery and Acceptance of Units.** The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Agreement Lessee shall timely execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this lease. The inspection and acceptance hereunder of any Unit of Equipment after September 30, 1989, shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance hereof on behalf of the Lessor for any purpose whatsoever.

**Section 3. Rentals.** The Lessee agrees to pay to the Lessor, as rental for each Unit, listed on Schedule A rent in accordance with the terms set forth on Schedule F and with respect to each Unit listed on Schedule B, the rent in accordance with the terms set forth on Schedule G.

The base price per Unit of the Equipment is set forth in Schedules A and B hereto. Such base price is subject to such increase or decrease as is agreed to by the Lessor and the Lessee. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased; provided, however, that in no event shall the Purchase Price of all Units accepted hereunder exceed \$37,400,000.

If any of the Rental Payment Dates set forth on Schedules F and G is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania and Norwalk, Connecticut, are authorized or obligated to remain closed.



The basic rent set forth in Schedules F and G and the related Casualty Values set forth on Schedules D and E hereto have been calculated on the assumption that all the delivered and accepted Units will be funded by the Lessor on March 1, 1989 with respect to Units listed on Schedule A and December 30, 1988 with respect to Units listed on Schedule B. If such assumption is not correct then such basic rent and such Casualty Values payable by the Lessee hereunder shall be increased or decreased, as the case may be, by such amount as shall in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return (as defined in Section 16(c) hereof) to equal the Net Economic Return that would have been realized by the Lessor if such assumption had been correct.

Funding for deliveries of Units listed on Schedule B shall be on or before December 31, 1988. Funding for deliveries of Units listed on Schedule A shall be on dates mutually agreed to by Lessor and Lessee.

All amounts payable by the Lessee hereunder shall be paid in immediately available funds. Lessee shall not pay any interim rent or basic rent prior to the date due.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of Sections 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Sections 3 and 13 hereof ("Lease Term"). The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease, as shall the obligations of the Lessor under Sections 6, 7, 9, 14 and 16 hereof.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to documents filed with the Interstate Commerce Commission." with appropriate changes thereof as from time to time may be required by law, in the reasonable opinion of the Lessor, in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited and (ii) the Lessee shall have furnished

the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

#### **Section 6.        General Tax Indemnity**

(a) Indemnity. The Lessee agrees to pay, and to indemnify and hold the Lessor harmless from, on an after-tax basis, all taxes, assessments, fees and charges together with any penalties, fines, additions to tax or interest thereon, however imposed, whether levied or imposed upon the Lessor by any Federal, state, District of Columbia or local government or governmental subdivision thereof, upon or with respect to, any Unit; the purchase, ownership, delivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement or any payment made pursuant to this Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed hereafter referred to as "General Taxes"); excluding, however:

(i) United States Federal income taxes and income taxes imposed by any state, District of Columbia;

(ii) taxes on, based on, or measured by the income (including gross income), receipts other than sales and use type taxes, capital, franchise, excess profits or conduct of business of an indemnitee imposed by any state or local government, political subdivision or taxing authority in the United States other than such which are (a) imposed as a result of a nexus between any Unit of Equipment and any such taxing jurisdiction in which the Lessor is not at the time otherwise subject to such Taxes and of Lessor in the jurisdiction in which is located Lessor's (b) not subject to offset or credit against the tax liability of Lessor in the jurisdiction of Lessor's principal place of business;

(iii) taxes on, based on, or measured by the income (including gross income), receipts, capital, franchise, excess profits or conduct of business of the Lessor imposed by any government or taxing authority of or in a foreign country or of or in a territory or possession of the United States, or by any international authority, other than such Taxes which are (a) imposed as a result of a nexus between any Unit of Equipment and such a taxing jurisdiction in which the Lessor is not at the time

otherwise subject to such Taxes, and (b) not subject to offset or credit against the Lessor's United States federal income tax liability or the tax liability of the Lessor in the jurisdiction in which is located its principal place of business;

(iv) Taxes relating to each Unit of Equipment fairly attributable to events occurring during any period following the expiration or early termination of the Lease Term and return of such Unit of Equipment by Lessee, except that taxes incurred in connection with the exercise of any remedies pursuant to an Event of Default hereunder shall not be excluded from the indemnity provided for in Section 16(c) hereof;

(v) taxes imposed on the Lessor which arise out of or are caused by the gross negligence, fraud or willful misconduct of the Lessor;

(vi) taxes for which Lessee is obligated to indemnify the Lessor under Section 16 hereof;

(vii) U.S. withholding taxes imposed on payments to a foreign person;

(viii) Taxes which have been included (to the extent included) in Lessor's Cost; or

(ix) taxes imposed upon Lessor as a result of the voluntary transfer of title, sale, or other disposition of the Units to someone other than Lessee at a time when no Event of Default or Potential Default has occurred and is continuing.

(b) Payment. All amounts payable to the Lessor pursuant to this Section 6 shall be paid promptly in immediately available funds and in any event within 30 days after receipt by the Lessee of written demand therefor from the Lessor requesting reimbursement or indemnification for any General Taxes, on the basis that the Lessor has paid or within 15 days expects to pay such amounts.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against the Lessor for any General Taxes, the Lessor shall, upon receipt of notice of such proceeding, promptly, but in any event within the time necessary for Lessee to meet any statutory requirements, notify the Lessee. Lessor agrees to confer with Lessee, if so requested, and agrees to take such action in connection with contesting any such proceeding as the Lessee shall reasonably request provided, however, that:

(i) within 30 days, or such shorter time as may be required by law, after notice by the Lessor to Lessee of such proceeding the Lessee shall request that it be contested;

(ii) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences

with any applicable agency with respect to any such claim, accept the findings of such agency or otherwise terminate any audit or other administrative proceedings and may, at its sole option, either pay the General Taxes and sue for a refund in such court as the Lessor shall elect, or contest the proceeding in any appropriate forum; provided, however, that Lessee shall have no obligation to indemnify Lessor for any such General Taxes, if as a result of Lessor's foregoing of any such administrative appeals, proceedings, hearings or conferences, Lessor shall lose the right to contest the merits of such imposition or levies; and

(iii) prior to taking such action, the Lessee at its expense shall furnish the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such proceeding;

it being understood, however, that in no event shall the Lessor be required to commence any proceeding pursuant to this paragraph (c) unless the Lessee shall have provided the Lessor with sufficient funds on an interest-free basis to pay such General Taxes as are required to be paid so to proceed.

(d) Costs of Contest. The Lessee shall indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur from time to time as a result of participating in any proceeding described in paragraph (c) of this Section 6. The indemnification shall be an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with any such proceeding or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, tax or penalty which may ultimately be due and payable as a result of any such proceeding. Such amounts shall be payable within 15 days after the presentation to Lessee of appropriate documentation in reasonable detail of such costs, expenses, interest, taxes or penalties and the demand for payment thereof.

(e) Refund. If the Lessor shall obtain a refund of all or any part of such General Taxes paid by the Lessee or with the Lessee's advance of funds, the Lessor shall pay to the Lessee the amount of such refund, subject to the Lessee making the indemnification in this Section 6. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to General Taxes paid by the Lessee prior to the receipt of such refund or with an advance provided by the Lessee.

(f) Reports. In case any report or return is required to be made relating to any General Taxes, the Lessee will, at its

own expense, make and timely file such reports and returns where permitted to do so under applicable rules and regulations (the interest of the Lessor in the Units to be shown in a manner satisfactory to the Lessor) or, where not so permitted, notify the Lessor of such requirement and at Lessee's expense will prepare and deliver such reports or appropriate portions thereof to the Lessor within a reasonable time prior to the time such reports are to be filed. Any allocable expenses incurred by the Lessor with respect to the submission or execution of any such report or return, or the filing or recording thereof, shall be reimbursed to the Lessor by the Lessee in the manner provided in paragraph (d) of this Section 6. Lessor agrees to notify Lessee of any reporting or return requirements of which it is aware in the ordinary course of its principal business (other than reports or returns required in the railroad industry or for property or sales and use taxes) and to provide Lessee, in a timely manner, all information in the possession of Lessor which is reasonably required for the preparation and filing of such report or return.

**Section 7. Maintenance; Casualty Occurrences; Insurance.**  
The Lessee, at its own expense, will maintain, service and adhere to a preventive maintenance schedule with respect to each Unit so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate purchase or lease and immediate regular use by a Class I line-haul railroad. In no event shall any Unit be maintained on a basis less frequent than the maintenance basis employed as of the date hereof by the Lessee for any similar equipment owned or operated by Lessee.

In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged, or in the opinion of Lessee worn out from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the Purchase Agreement, or taken or requisitioned by condemnation or otherwise by the United States Government or by any other government or governmental entity resulting in loss of possession by the Lessee for period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly (but in any event within 60 days after such Casualty Occurrence) and fully notify the Lessor, with respect thereto. On the Rental Payment Date next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Rental Payment Date, in accordance with Schedules D and E hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to

recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representations or warranties and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provisions of the Purchase Agreement in an amount equal to any patent indemnity payment in respect of such Unit made by the Builder to the Lessor under the Purchase Agreement.

The Casualty Value of each Unit as of any Rental Payment Date shall be that amount for that Unit as is set forth in Schedules D and E hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to Section 3 hereof and before such Unit shall have been returned in the manner provided in Section 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and, except as provided in Section 14 hereof, pay to the Lessor an amount equal to the Casualty Value of such Unit and all other rental payments then due and payable (other than any payment of rent due on such date which constitutes an "in advance" payment of rent), which shall be an amount equal to the amount for such Unit on the final Rental Payment Date following the Basic Rent Commencement Date. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof at the best price obtainable on an "as is, where is" basis without representations or warranties and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligation to pay rent under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided no Event of Default pursuant to Section 10(A) (or other event which after notice or lapse of time or both would become an Event of Default pursuant to Section 10(A)) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

Except as hereinabove provided in this Section 7, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance hereof by the Lessee hereunder.

Lessee will at all times prior to the return of all Units to Lessor, as part of an insurance program including appropriate risk retention and self-insurance, and at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units in amounts and against such risks as are customarily insured against by Lessee in respect of similar equipment owned or leased by it, and comparable to such coverage maintained by other Class I railroads. All policies with respect to such insurance shall name Lessor as additional named insured, shall provide for at least 30 days' prior written notice by the insurance carrier to Lessor in the event of cancellation, expiration or amendment (and Lessee shall provide 30 days' prior written notice to Lessor in any such event), and shall include waivers by the insurer of all claims for premiums against Lessor. Each such insurance policy shall provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insured as a group) and liability for premiums (which shall be solely a liability of Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by Lessor. Lessee shall, at its own expense, make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. Lessee shall,

not later than June 15th of each year with respect to public liability insurance and November 15th of each year with respect to casualty insurance, commencing on June 15, 1989 and November 15, 1989, furnish to Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder. Lessee shall, not later than 30 days prior to the expiration date of any of its insurance policy or policies required to be carried and maintained with respect to the Units under this Section 7, furnish to Lessor a written notice to the effect that (i) Lessee is in good faith negotiating the renewal of such policy or policies; and (ii) Lessee expects to furnish to Lessor certificates evidencing renewal of such policy or policies, as promptly as practicable. Lessee shall furnish to Lessor certificates evidencing renewal of such policy or policies not later than 15 days after the expiration date of such policy or policies. Lessee shall furnish to Lessor a prompt telephonic notice (promptly confirmed in writing) of any material adverse change in Lessee's insurance program. In the event that Lessee shall fail to maintain insurance as herein provided, and has failed to obtain separate policies reasonably satisfactory to Lessor, Lessor may at its option on five Business Days' prior written notice to Lessee provide such insurance (giving Lessee prompt written notice thereof) and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof together with interest on the amount of such cost from the date of payment thereof at the Overdue Rate as defined in Section 17 hereof. Lessee shall, at its own expense, make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. If Lessor shall receive any insurance proceeds or condemnation payments in respect of any Unit suffering a casualty occurrence, Lessor shall, subject to Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default or Potential Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to Lessee. All insurance proceeds received by Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default (or other Event, which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. Any amounts paid or payable to Lessor under the foregoing insurance shall not be reduced on account of any amount which may be paid or payable to Lessor by reasons of claims made under any other policies of insurance under which Lessor is a beneficiary claimant. Notwithstanding the foregoing, Lessor shall in no event be obligated to participate in the funding of any self-insurance program of Lessee. Lessor shall have the right to carry insurance on the Units for their own benefit; provided, that such insurance is carried at the expense of any person other than Lessee.

**Section 8. Reports.** On or before April 30 in each year, commencing with a calendar year 1990, the Lessee will furnish to



the Lessor a certificate signed by the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 hereof have been preserved or replaced. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee shall promptly notify the Lessor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

**Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification.** THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR OR ANYONE CLAIMING THROUGH IT), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EXCEPT THAT LESSOR REPRESENTS IT HAS WHATEVER TITLE IT RECEIVES FROM THE BUILDER IN RESPECT OF EACH UNIT THERETO, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee, its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation,

subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense (any such additions which are readily removable without material damage to the Units shall become the property of the Lessee if their removal would not adversely and materially affect the value of the Units and their installation was required by law for limited special use and not general operation); provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor (which shall be promptly given to Lessee), adversely affect the property or right of the Lessor under this lease. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Lessor's basis for such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for additions required by law for limited special

use and not general operation which are readily removable without causing material damage to the Units and without adversely and materially affecting the value of the Units) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease or the Purchase Agreement or the occurrence of an Event of Default or Potential Default under this Lease or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, lease, sublease, delivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14 of this Lease provided, however, that this paragraph shall not be read as a waiver of any right of action Lessee may have in respect of any such act, omission or misrepresentation of Lessor or anyone acting under, through, or on behalf of Lessor. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Except as otherwise expressly provided in Section 14, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) all reports (or the appropriate portions thereof) (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, or the leasing thereof to the Lessee.

**Section 10. Default.** If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in Section 3 or 7 hereof, and such default shall continue for five (5) business days after receipt of written notice by Lessee of Lessor's failure to receive such payment;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee provided, however, that a default as described in this subsection (c) which jeopardizes Lessor's right, title or interest in or to any Unit of Equipment shall become an Event of Default on the date defined in subsection (c)(ii);

(D) any representation or warranty made by the Lessee contained herein (other than those contained in Section 16 herein), in the Assignment of Purchase Agreement, or in any certificate furnished to the Lessor in connection with the Lease or the Assignment of Purchase Agreement is untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such

ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including but not limited to net after-tax losses of Federal, state and local income tax benefits to which the Lessor would otherwise be entitled under this Lease;

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) including but not limited to any amounts due the Lessor pursuant to Section 6 and Section 16, provided, however, that Lessor shall not be relieved of its obligation, under Section 6(c) or Section 16(h) except as specifically provided therein, and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of

the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 9.75% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; appropriate refunds of any amounts previously collected from the Lessee which would be inconsistent with the amounts which would be due in the context of the facts and circumstances of such actual rental arrangement will be immediately repaid to the Lessee and if any additional amounts would be due the Lessor pursuant to this clause (x) based upon the facts and circumstances of such actual rental arrangement such amounts will be immediately paid to the Lessor, or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination over the net proceeds of such sale. In the event Lessee does not pay Lessor the amounts required under the previous sentence, Lessee shall pay charges at the Overdue Rate from date of sale until date of receipt of Lessee's funds.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity.

The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable and lawful manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in §1168 of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

**Section 11. Return of Units Upon Default.** If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units and the flatcars to the Lessor and shall assign to Lessor all rights to the use of the flatcars. Each Unit so delivered shall be in the condition required by the first paragraph of Section 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; provided, however, that such storage without charge shall not extend beyond the latest storage date specified in Section 14 hereof; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

Except as specifically provided herein, the assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by the first paragraph of Section 7 hereof and will permit and cooperate with the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same in a reasonable manner consistent with current industry practice. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

Without in any way limiting the foregoing obligations of the Lessee under this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

**Section 12. Assignment; Possession and Use.** So long as no Event of Default exists hereunder, this Lease shall not be assignable in whole or in part by the Lessor or any affiliated company of Lessor to any person other than an affiliated company of Lessor without the written consent of the Lessee, which shall not be unreasonably withheld. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than



twelve months; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of Section 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

**Section 13. Renewal and Purchase Options.** Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing, the Lessee may:

(a) **Early Buyout Option:** Upon 90 day prior written notice Lessee may: (i) on June 30, 2002, purchase any (in groups of not less than 200 Units) or all Units of Equipment listed on Schedule B at a purchase price equal to 53.5% of Lessor's original cost for such Units of Equipment and (ii) on July 2, 2002, Lessee may purchase any (in groups of not less than 200 Units) or all Units of Equipment listed on Schedule A, at a purchase price equal to 53% of Lessor's original cost for such Units of Equipment.

(b) **End of Term Purchase Option.** Upon notice given to Lessor 90 days prior to scheduled Lease expiration, Lessee may purchase any (in groups of not less than 200 Units) or all Units of Equipment at the purchase price equal to the then fair market value, such amount not to exceed 43% of Lessor's original cost for such Units of Equipment. Additionally, at the end of any renewal period, Lessee may exercise its option to purchase any or all Units of Equipment for the then fair market value of such Unit of Equipment. Fair market sales value shall be the price agreed to by Lessee and Lessor, in writing, as the cash purchase price that would obtain in an arm's length transaction between a purchaser and seller, both being informed and willing and neither being under any compulsion to buy or sell.

(c) **Renewal Option.** Upon notice given to Lessor 90 days prior to scheduled Lease expiration, extend the Lease with respect to any (in groups of not less than 200 Units) or all of the Units for successive periods of not less than one year each, the first such period commencing at the end of the Lease term; provided that the total of all such periods under this Section 13(c) shall not exceed four years. The rent payable for each Unit of Equipment the lease of which has been so extended under this Section 13(c) shall be equal to one-half of the average annual rent for such Unit of Equipment paid in respect of such Unit during the initial Lease term.

(d) Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale without representations or warranties on an "as is, whereis" basis for such Unit such as will transfer to the Lessee such

title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

**Section 14. Disposition of Units upon Expiration of Term.**  
Unless Lessee shall have purchased and paid for the Units pursuant to the terms and conditions set forth in Section 13 hereof, or unless Lessee shall have renewed this Lease Agreement under any terms and conditions, or unless Lessee shall have paid Lessor the Casualty Value following a Casualty Occurrence for the units, Lessor shall have the following options which will be exercised with at least 60 days written notice prior to the expiration of the term:

(1) Require Lessee to remove the Units from the flatcars and prepare the flatcars so that they are acceptable to Trailer Train, all at Lessee's expense and risk. During the period of time necessary for removal of the Units, all related expenses (flatcar rental, insurance, transportation charges, etc.) shall be Lessee's responsibility; or

(2) Require the Lessee to store the Unit or Units attached to the flatcars on its storage tracks for a period not exceeding 90 days from the expiration date (the "Storage Period") and transport the same, at any time within the Storage Period, to any point that Lessor shall designate on Lessee's lines or to a point on Lessee's lines for a connecting carrier for shipment, the movement and storage of such units during the Storage Period to be at the expense and risk of the Lessee. During the Storage Period Lessor shall not be responsible for the expenses of storage. During the Storage Period under this option, Lessor shall be responsible for all rents, including but not limited to Trailer Train rental due on the subject flatcars, from and after the date each flatcar is delivered to the storage tracks. If Lessor requests and provides funds, Lessee shall continue to make the subject flatcar rent payments to Trailer Train on Lessor's behalf during the Storage Period, or if Lessor requests, Lessee shall assign whatever rights it has to the subject flatcars to another Class I railroad. Each Unit returned to the Lessor pursuant to this subparagraph shall be in the condition required by the first paragraph of Section 7 hereof. Subsequent to the expiration of the term and prior to any transfer of any Unit from the possession and control of Lessee to Lessor, the parties hereto and a representative of Trailer Train shall inspect the Units for damage in a reasonable manner consistent with current industry practice. In the event that any Unit shall suffer a Casualty Occurrence during such Storage Period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in Section 7 hereof, provided, however, Lessee shall have no obligation to pay Lessor the Casualty Value for a Unit which suffers a Casualty Occurrence while being operated or inspected by Lessor or its agents during the Storage Period. During such Storage Period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee

or user of such Unit, to inspect the same in a reasonable manner and consistent with current industry practice; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

Section 15. Recording. The Lessor, at Lessee's expense, will cause this Lease and any assignment hereof to be filed in accordance with 49 U.S.C. §11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forth in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada prior to the delivery and acceptance of any Unit hereunder. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease, and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this Section 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

Section 16. (a) Assumed Tax Consequences. This Lease has been entered into on the assumption that it will have the following tax consequences (herein referred to as "Assumed Tax Consequences"):

(i) The transaction will be treated as a lease for tax purposes. The Lessor will be treated as the owner and Lessor of each Unit and the Lessee will be treated as Lessee of each Unit.

(ii) In the hands of the Lessor as of the delivery and acceptance of each Unit, such Unit will constitute "7-year property" within the meaning of Section 168 of the Internal Revenue Code of 1986, as amended ("Code"), and the Lessor will be entitled to the deductions allowed under Section 168 of the Code with respect to such Unit (the "Cost Recovery Deductions").

(iii) The Lessor will be entitled to the Cost Recovery Deductions with respect to the full amount of the Lessor's tax basis for each of the Units and the full amount of the Cost Recovery Deductions will be allowed to the Lessor and there will be no recapture of the Cost Recovery Deductions by the Lessor.

(iv) The Lessor shall be entitled to depreciate the Units for state and local income tax purposes in the Lessor's home state (the "State and Local Tax Benefits").

(v) Alterations, improvements and additions to any Unit by the Lessee will not result in any adverse tax consequences to the Lessor.

(vi) All income deductions with respect to the Units will be from sources within the United States.

(vii) The maximum Federal income tax rate applicable to the Lessor is 34% in 1988 and subsequent years.

It being expressly agreed, however, that the Lessee does not warrant or represent the accuracy of any of the assumptions set forth in subsection (a) of this Section.

(b) Lessee's Representations and Warranties. The Lessee represents and warrants for purposes of this Section that:

(i) in the hands of the Lessee as of the date of delivery and acceptance of each Unit, such Unit will constitute "7-year property" within the meaning of Section 168 of the Code, and the Lessor will be entitled to the Cost Recovery Deductions with respect to such Unit (the "Cost Recovery Deductions");

(ii) the Lessee has not made any claim and will not make any claim predicated on tax or legal ownership of the Units, including but not limited to, a claim of the Cost Recovery Deductions, the Interest Deductions or the State and Local Tax Benefits;

(iii) at all time during the Lease Term the Lessee will not use nor permit the use of the Units in any taxable year of the Lessor "predominately outside the United States," within the meaning of Section 168(g)(1)(A) of the Code;

(iv) at all times during the Lease Term, the Lessee will not use or permit the use of the Units outside the United States of America in such a manner as to affect the ability of the Lessor to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the Lease as being derived from or allocable to, sources within the United States of America;

(v) as of the date of delivery and acceptance of each Unit, such Unit will not be property described in Section 168(g) of the Code;

(vi) as of the date of delivery and acceptance of each Unit, such Unit will not be "limited use property" within the meaning of the Internal Revenue Service Revenue Procedure 76-30, 1976-2 C.B. 647.

(c) Indemnity. If by reason of any act of commission or omission (including any acts of commission or omission permitted to be taken pursuant to the Lease), misrepresentation, breach of any agreement, covenant, representation or warranty contained herein on the part of the Lessee, (i) the Lessor shall lose the right to claim or shall not claim (as the result of a good faith determination based upon the advice of independent tax counsel selected by the Lessor and approved by Lessee, which approval shall not be unreasonably withheld (hereinafter referred to as "Tax Counsel")), that such claim is not properly allowable by reason of any act of commission or omission, misrepresentation or breach of any agreement, covenant or warranty by the Lessee), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Cost Recovery Deductions, or State and Local Tax Benefits or such benefits are available as to the Lessor only at later dates than assumed, or (ii) the Lessor shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to the Lessor if the Lessor had not participated in the transactions contemplated by the Lease (the "Foreign Tax Credit") (any of such events being a "Loss"), then the Lessee shall pay to the Lessor such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes, including penalties and interest, if any, payable by the Lessor from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient, on an after-tax basis, to preserve the Lessor's Net Economic Return plus, on an after-tax basis, an amount equal to any interest, additions to tax and/or penalties imposed as a result of the Loss which gave rise to indemnification hereunder. The Lessor's net after-tax economic and accounting yields and cash flows computed on the basis of such assumptions and the same method of accounting as were utilized by the Lessor in evaluating this transaction are herein called "Net Economic Return."

Upon the request of the Lessee, the Lessor will furnish to the Lessee a certificate of the Lessor's independent accountants, verifying that the amount of such indemnification payment is in an amount sufficient, but not greater than the amount necessary, on an after-tax basis assuming a combined Federal and state tax rate of 38.95 percent, to preserve the Lessor's Net Economic Return.

(d) Subsequent Benefit. If, as a result of any Loss for which indemnification is paid by the Lessee hereunder the aggregate Federal income taxes paid or accrued by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, and if such reduction in taxes was not taken into account in determining the amount of indemnification payable by the Lessee hereunder, then the Lessor will pay the Lessee the amount of such difference in taxes plus an amount equal to any additional reductions in tax realized by the Lessor as a result

of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this Section 12 (i) so long as the Lessee is in default or a condition exist nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that such payment would cause the Lessor not to realize its Net Economic Return, or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor, pursuant to this subsection (d) are in excess of all amounts previously paid by the Lessee with respect to such loss.

(e) Payment. All amounts payable to the Lessor hereunder shall be paid promptly and in immediately available funds and in any event within 15 days after receipt by the Lessee of a written demand therefor on the basis that the Lessor has paid or within 15 days expects to pay such amounts. Any payment due to the Lessee from the Lessor pursuant to this Section shall be paid promptly and in any event within 15 days after the Lessor realizes any reduction in its income or franchise taxes based upon net income.

(f) Limitations on Special Tax Indemnities. Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Lessor as an indemnity under this Paragraph in respect of any Loss to the extent that such Loss results from the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in any unit or any interest in the Lease, except pursuant to its exercise of any rights in respect of a Default;

(ii) the failure of the Lessor to claim (unless Tax Counsel has advised that such claim is not properly allowable by reason of acts of commission or omission, misrepresentations or breach of any agreement, covenant or warranty by the Lessee) the Cost Recovery Deductions, the Foreign Tax Credits, or the State and Local Tax Benefits;

(iii) the loss results directly from the negligent or willful misconduct of the Lessor that is inconsistent with the tax assumptions in section 16;

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit the Investment Credit or to have sufficient income to benefit from the Cost Recovery Deductions or the Interest Deductions or to utilize the State and Local Tax Benefits, as the case may be;

(v) a Casualty Occurrence to the extent of the Casualty Value timely paid by the Lessee pursuant to Section 7 of the Lease; or

(vi) any changes in tax law occurring after December 15, 1988.

(g) Indemnity for Improvements. If at any time the Lessor is required to include in its gross income an amount in respect of any improvement or addition to the units or any accession referred to in Section 9 hereof Lessee shall pay to the Lessor, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes payable by the Lessor from time to time as a result of such capital expenditures plus the amount of any interest, penalties or additions to tax payable as a result of any such capital expenditures provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the capital expenditures and the receipt of indemnification payments hereunder, shall preserve the Lessor's Net Economic Return. If as a result of any such capital expenditures the taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had not such capital expenditures been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence with respect to any capital expenditures (i) so long as the Lessee is currently in default or a condition exists or an event has occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that any such payment would cause the Lessor not to realize its Net Economic Return or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor to the Lessee pursuant to this subsection (g) with respect to such capital expenditure, are in excess of all amounts previously paid by the Lessee to the Lessor with respect to such capital expenditure.

(h) Contest of Disallowance of Tax Benefits. If a claim ("Claim") shall be made at any time which, if successful, would require the Lessee to indemnify the lessor under this Section, the Lessor hereby agrees to contest such Claim in good faith, taking into consideration such actions as the Lessee may reasonably request; provided, however, that:

(i) within 30 days after notice by the Lessor to the Lessee of such Claim, the Lessee shall request that such Claim be contested;

(ii) the Lessor shall control all proceedings in connection with such claim and, at its sole option, may forego or terminate any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service with respect to such Claim and may, at its sole option,

either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Claims Court as the Lessor shall elect, or contest such Claim in the United States Tax Court; provided,

however, that the Lessee shall have no obligation to indemnify the Lessor for any such Taxes, if as a result of the Lessor's foregoing or terminating any such administrative appeals, proceedings, hearings, or conferences, the Lessor shall lose the right to contest the merits of such impositions of levies;

(iii) prior to the Lessor's taking any such requested action, the Lessee at the Lessee's expense shall have furnished the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such Claim;

(iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss directly related to such Claim which the Lessor may incur from time to time as the result of contesting such Claim and shall pay to the Lessor within 15 days after written demand therefor from time to time an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with contesting or defending such Claim or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, additions to tax or penalties which may ultimately be payable as a result of contesting such Claim or appeal; and

(v) if the Lessor shall have elected hereunder to pay the tax claimed and then seek a refund, the Lessee will advance to the Lessor sufficient funds, on an interest-free basis, to pay the tax.

(i) Appeals. Notwithstanding any other obligation of the Lessor under this Section, the Lessor shall have no obligation to appeal any adverse trial or appellate court determination with respect to any Claim, unless:

(i) prior to the Lessor's making any such appeal, the Lessee shall, upon request by the Lessor, have furnished the Lessor with security, satisfactory to the Lessor, with respect to the Lessee's liability for indemnification under this Section 16 with respect to such Claim, together with at Lessee's expense a timely opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor prevailing on the merits of such appeal; and



(ii) with respect to any appeal of any appellate court determination, prior to the Lessor's making such appeal, the Lessee at its expense shall have timely furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that the likelihood of reversal of the adverse determination on appeal is substantially greater than the likelihood of affirmance.

(j) Deferral of Lessee's Liability. If any Claim shall be made and the Lessee shall have reasonably requested the Lessor to contest such Claim as above provided and shall have duly complied with all of the terms of subparagraph (h) of this Section, the Lessee's liability for indemnification hereunder (other than as provided in subparagraph (h)(iv) of this Section) shall be deferred until final determination of the liability of the Lessor. At such time the Lessee shall become obligated for the payment of any indemnification hereunder resulting from the outcome of such contest, and the Lessor shall become obligated to refund to the Lessee any amount received as a refund by the Lessor fairly attributable to advances by the lessee hereunder, together with any interest received by the Lessor on such refund. Such obligations of the Lessor and the Lessee will first be set off against each other and any difference owing by either party shall be paid within 30 days after such final determination.

(k) Notice and Cooperation. The Lessor agrees promptly to notify the Lessee in writing of any Claim and agrees not to make payment of the tax claimed or to consent to the assessment of any deficiency relating directly to such Claim for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such Claim which may be peculiarly within the knowledge of the Lessor and otherwise to cooperate with the Lessee in good faith in order to contest any such Claim.

(l) Waiver of Indemnification Settlement. Nothing contained in this Section shall require the Lessor to contest any Claim if the Lessor shall waive the payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section by way of indemnity in respect of such Claim. The Lessor shall not enter into a settlement or other compromise with respect to any Claim without the prior written consent of the Lessee, unless (i) the Lessor shall have complied with its obligations to contest under this Section or (ii) the Lessor shall waive its right to be indemnified with respect to such Claim under this Section.

(m) Survival of Indemnities. The respective liabilities of the Lessee and the Lessor to make indemnification payments pursuant to this Section 16 shall, notwithstanding any expiration or termination of the Lease, continue to exist until such indemnity payments are made by the Lessee and the lessor, respectively.

**Section 17. Interest on Overdue Rentals.** Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable ("Overdue Rate"), an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the interest announced from time to time by The Chase Manhattan Bank, N.A. as its "prime rate" on commercial loans (which interest rate shall fluctuate as and when said prime rate shall change), or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

**Section 18. Notices.** Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been received by the addressee on the date of transmission, if by telex, or on the date of actual receipt, if by mail or by hand, if addressed as follows:

(a) if to the Lessor, Pitney Bowes Credit Corporation, 201 Merritt Seven, Norwalk, Connecticut 06856, Attention: Vice President-Operations;

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer-Financing;

or at such other address as either part shall have designated to the other party in writing.

**Section 19. Severability; Effect and Modification of Lease.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

**Section 20. Conditions Precedent to Funding.** The Lessor's obligation to purchase and pay for Units shall be subject: (a) to the terms and conditions of the Purchase Agreement; (b) that Lessee shall have a long term bond rating of not less than A from Standard & Poor's Corporation (or the equivalent rating from Moody's Investors Services, Inc.), and (c) to the receipt by the Lessor in form and substance satisfactory to its counsel, of the following executed documents:

- 1) an opinion of Lessee's counsel dated as of such delivery date and to the same effect as Exhibit One (1) hereto;
- 2) certified copies of Lessee's Articles of Incorporation and Bylaws;
- 3) certificate(s) evidencing the insurance coverage required by Section 7 hereof;
- 4) Certificate(s) of Acceptance covering the Units to be purchased in the form set forth on Schedule C hereto;
- 5) Purchase Agreement and evidence of the manufacturers' consent to such Purchase Agreement;
- 6) evidence of recordation of the Lease with the Interstate Commerce Commission.

**Section 21. Further Assistance.** Lessee shall execute and deliver to Lessor upon Lessor's request such instruments and assurances as Lessor reasonably deems necessary for confirmation or perfection of this Lease and Lessor's rights thereunder. In furtherance thereof, Lessor may file or record this Lease or a financing statement with respect thereto so as to give notice to any interested parties. Lessor is authorized to file a financing statement signed only by Lessor in accordance with the Uniform Commercial Code or one signed by Lessor as Lessee's attorney in fact. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code.

**Section 22. Execution.** This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

**Section 23. Law Governing.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

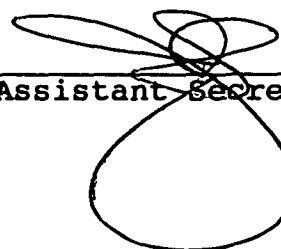
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION

By 

[CORPORATE SEAL]

Attest:

  
Assistant Secretary

PITNEY BOWES CREDIT CORPORATION

By 

L. D. OSMANSKI  
Vice President  
Operations

[CORPORATE SEAL]

Attest:

  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA )

ss.:

On this 23rd day of December, 1988, before me personally appeared Thomas P. Baker, to me personally known, who, being by me duly sworn, says that he is Asst. Treasurer-Financing of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Loretta Dandridge  
Notary Public

LORETTA DANDRIDGE  
Notary Public, Phila., Phila. Co.  
My Commission Expires Aug. 27, 1990

STATE OF Connecticut )  
COUNTY OF Fairfield )

ss.:

On this 23rd day of December, 1988, before me personally appeared L. D. Osmanowski, to me personally known, who, being by me duly sworn, says that he is V.P. Operations of Pitney Bowes Credit Corporation that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Gileen M. Dyer  
Notary Public

NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1993.

**SCHEDULE A TO LEASE**

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Average Base Price Per Unit</u>
Fully-enclosed bi-level autoracks	Thrall	225	7480-7704	\$27,646
Fully-enclosed tri-level autoracks	Thrall	625	6855-7479	\$35,948

**SCHEDULE B TO LEASE**

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Base Price Per Unit</u>
Fully-Enclosed Bi-Level Auto Racks	Thrall Manufacturing Company	150	6705-6854	\$25,828

**SCHEDULE C TO LEASE**

**Certificate of Acceptance**

**To:**

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Lease of Railroad Equipment, dated as of December 1, 1988 do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:  
MODEL:  
DATE ACCEPTED:  
NUMBER OF UNITS:  
NUMBERED: CR  
MANUFACTURER'S NUMBER:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to documents filed with the  
Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

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Authorized Representative of Lessor and Lessee

**BUILDER:**

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## SCHEDULE D TO LEASE

Casualty Value  
For Equipment Funding in December, 1988

The Casualty Value of any Unit of Equipment listed on Schedule A payable to Lessor as a result of any casualty occurrence shall mean an amount equal to the percentage of the cost of such unit determined in accordance with the following schedule:

<u>RENTAL PAYMENT</u> <u>DATE</u>	<u>CASUALTY VALUE</u> <u>(AS % OF PURCHASE PRICE)</u>
30 DEC 1988	101.10000
30 JUN 1989	106.54197
30 DEC 1989	111.89182
30 JUN 1990	106.89670
30 DEC 1990	111.69896
30 JUN 1991	106.29454
30 DEC 1991	110.74688
30 JUN 1992	105.02944
30 DEC 1992	109.20222
30 JUN 1993	103.22632
30 DEC 1993	107.13562
30 JUN 1994	100.88705
30 DEC 1994	104.51415
30 JUN 1995	97.98089
30 DEC 1995	101.36183
30 JUN 1996	94.61979
30 DEC 1996	97.83822
30 JUN 1997	89.82321
30 DEC 1997	92.86145
30 JUN 1998	83.52643
30 DEC 1998	86.33200
30 JUN 1999	76.76603
30 DEC 1999	79.33386
30 JUN 2000	69.52185
30 DEC 2000	71.83506
30 JUN 2001	61.75952
30 DEC 2001	63.79999
30 JUN 2002	53.44219
30 DEC 2002	55.19053
30 JUN 2003	44.55111
30 DEC 2003	32.82462
30 JUN 2004	34.00000

**SCHEDULE B TO LEASE**

**Casualty Value  
For Equipment Funding in March, 1989**

The Casualty Value of any Unit of Equipment listed on Schedule B payable to Lessor as a result of any casualty occurrence shall mean an amount equal to the percentage of the cost of such unit determined in accordance with the following schedule:

<u>RENTAL PAYMENT</u> <u>DATE</u>	<u>CASUALTY VALUE</u> <u>(AS % OF PURCHASE PRICE)</u>
1 MAR 1989	101.10000
2 JUL 1989	104.88693
2 JAN 1990	110.60062
2 JUL 1990	105.83733
2 JAN 1991	111.03896
2 JUL 1991	105.76695
2 JAN 1992	110.51792
2 JUL 1992	104.84754
2 JAN 1993	109.24580
2 JUL 1993	103.25898
2 JAN 1994	107.37229
2 JUL 1994	101.11684
2 JAN 1995	104.95482
2 JUL 1995	98.41441
2 JAN 1996	101.95750
2 JUL 1996	95.12665
2 JAN 1997	98.41765
2 JUL 1997	90.20799
2 JAN 1998	93.28041
2 JUL 1998	83.71999
2 JAN 1999	86.55521
2 JUL 1999	76.75744
2 JAN 2000	79.34784
2 JUL 2000	69.29671
2 JAN 2001	71.62489
2 JUL 2001	61.30238
2 JAN 2002	63.34971
2 JUL 2002	52.73654
2 JAN 2003	54.48305
2 JUL 2003	43.55855
2 JAN 2004	44.98285
2 JUL 2004	34.00000

**SCHEDULE F TO LEASE****Rent Schedule For Equipment Under Schedule A**

Commencement Date: July 2, 1989  
 Expiration Date: July 2, 2004  
 Assumed Delivery Date: March 15, 1989

<u>RENTAL DATE</u>	<u>ADVANCE RENT(%)</u>	<u>ARREARS RENT(%)</u>
7/2/1989	0.00	0.00
1/2/1990	9.953159	0.00
7/2/1990	0.00	0.00
1/2/1991	9.953159	0.00
7/2/1991	0.00	0.00
1/2/1992	9.953159	0.00
7/2/1992	0.00	0.00
1/2/1993	9.953159	0.00
7/2/1993	0.00	0.00
1/2/1994	9.953159	0.00
7/2/1994	0.00	0.00
1/2/1995	9.953159	0.00
7/2/1995	0.00	0.00
1/2/1996	9.953159	0.00
7/2/1996	0.00	0.00
1/2/1997	11.059064	0.00
7/2/1997	0.00	0.00
1/2/1998	12.164971	0.00
7/2/1998	0.00	0.00
1/2/1999	12.164971	0.00
7/2/1999	0.00	0.00
1/2/2000	12.164971	0.00
7/2/2000	0.00	0.00
1/2/2001	12.164971	0.00
7/2/2001	0.00	0.00
1/2/2002	12.164971	0.00
7/2/2002	0.00	0.00
1/2/2003	12.164971	0.00
7/2/2003	0.00	0.00
1/2/2004	9.325677	0.00
7/2/2004	0.00	2.839294
<b>TOTALS</b>	<b>163.046680</b>	<b>2.839294</b>

**SCHEDULE C TO LEASE****Rent Schedule for Equipment Under Schedule B**

Commencement Date: June 30, 1989  
 Expiration Date: June 30, 2004  
 Assumed Delivery Date: December 30, 1988

<u>RENTAL DATE</u>	<u>ADVANCE RENT(%)</u>	<u>ARREARS RENT(%)</u>
6/30/1989	0.00	0.00
12/30/1989	0.00	0.00
6/30/1990	0.00	10.307953
12/30/1990	0.00	0.00
6/30/1991	0.00	10.307953
12/30/1991	0.00	0.00
6/30/1992	0.00	10.307953
12/30/1992	0.00	0.00
6/30/1993	0.00	10.307953
12/30/1993	0.00	0.00
6/30/1994	0.00	10.307953
12/30/1994	0.00	0.00
6/30/1995	0.00	10.307953
12/30/1995	0.00	0.00
6/30/1996	0.00	10.307953
12/30/1996	0.00	0.00
6/30/1997	0.00	11.453268
12/30/1997	0.00	0.00
6/30/1998	0.00	12.598584
12/30/1998	0.00	0.00
6/30/1999	0.00	12.598584
12/30/1999	0.00	0.00
6/30/2000	0.00	12.598584
12/30/2000	0.00	0.00
6/30/2001	0.00	12.598584
12/30/2001	0.00	0.00
6/30/2002	0.00	12.598584
12/30/2002	0.00	0.00
6/30/2003	12.598584	12.598584
12/30/2003	0.00	0.00
6/30/2004	0.00	0.00
<b>TOTALS</b>	<b><u>12.598584</u></b>	<b><u>159.200443</u></b>